IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 84 of 1996

with

CRIMINAL APPEAL No 131 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARVATBHAI MAGANBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 84 of 1996
MRS SHILPA J UNWALLA for Appellant
MR MA BUKHARI, APP for Respondent No. 1

2. Criminal Appeal No 131 of 1996
MR AJ SHASTRI for Appellant
MR MA BUKHARI APP for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/06/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Appellant was tried along with his father and mother by Assistant Sessions Judge, Panchmahals at Godhra for offences punishable under section 498(A) and 306 read with section 114 of Indian Penal Code. However, on appreciation of evidence, the trial court by judgment and order dated 22nd September, 1995 convicted the appellant for the offences punishable under sections 498(A) and 306 of I.P.C. and sentenced the appellant to undergo rigorous imprisonment for three years and fine of Rs. 500/- and in default of payment of fine, rigorous imprisonment for a period of 7 days for an offence punishable under section 498(A) of Indian Penal Code and also sentenced the accused to undergo rigorous imprisonment for a period of 10 years and fine of Rs. 1,000/- and in default of payment of fine, simple imprisonment for 15 days for an offence punishable under section 306 of I.P.C. All the sentences were ordered to run concurrently.

#. When the mater is called out for final hearing, learned advocate, appearing for the appellant has chosen not to remain present. We are assisted by the learned Asstt. Public Prosecutor appearing in the matter. He has stated that the accused is already released having undergone sentence. He submitted that sentence has been reduced in view of remission granted and he has been released on 31st March, 2001. Possibly, as stated by the learned A.P.P., advocate for the appellant may not be interested in the matter.

#. However, it would be necessary for the Court to examine the matter on merits. From the First Information Report, lodged with the police, vide exh. 20 by Danabhai on 29.9.94, it is clear that Indira - deceased died on account of consuming poisonous substance. It appears that she took pesticides which is used for cultivating cotton crop. On investigation, the police found that the persons charge sheeted were required to be prosecuted and tried and therefore, the police filed charge sheet in the court of Judicial Magistrate First Class, who committed the case to the Court of Session. Learned Assistant Sessions Judge framed charge vide exh. 1 on 21.7.95

against the appellant and others to which the appellant pleaded not guilty and contended to be tried. Upon appreciation of oral as well as documentary evidence and hearing the submissions made by the learned counsel appearing for the prosecution as well as for the defence, the trial court convicted the appellant. However, the trial court acquitted two co-accused. It is against this order of conviction, the present appeals are preferred by the said convict - accused no. 1, one appeal through learned advocate and one appeal through jail.

#. Dr. Subodhbhai Mishra - prosecution witness no. 1 a Medical Officer, Kalol, in discharge of his duties on 29.9.94 performed post mortem on the person of the deceased Indira and has noted injuries found on the person of the deceased. Viscera was forwarded to the Forensic Science Laboratory for analysis and upon receipt of the report thereof, it was revealed that Endo Sulpha a pesticide was found in the stomach. According to the medical evidence semi-digested, food green in colour was found. The Medical Officer also noted in the post mortem report that the deceased had put on white saree, light blue petticoat and black embroidered blouse. As noted by the Medical Officer, clothes were blood stained at some places. On the first finger of the left hand, there was a crush injury. On the finger also, similar injury was noticed. The prosecution has placed on record report of the Assistant Chemical Analyser and the Serologist. In all 5 substances marked as A,B,C,D and E were forwarded by the police officer. Following articles were forwarded by the police officer to the FSL. (i) earth containing substance of vomiting (ii) sample of the earth taken from the place of occurrence (iii) aluminium bottle (iv) saree on which there were blood stains and (v) petticoat on which there were some blood stains. Out of the aforesaid articles in articles namely A, B & C, Endo Sulpha, a pesticides belonging to a group of Organo Carbonic was found. The report further reveals that on all articles there was presence of the aforesaid pesticides except the sample of earth without containing vomited substance. Thus, from the medical evidence as well as expert evidence, it is clear that Indira died as substance namely Endo Sulpha was taken by her.

#. The complainant has turned hostile and there has been cross-examination by the learned APP. Panch Natvarlal Thakkar, prosecution witness no. 3 has also not supported the prosecution. However, Sangitaben prosecution witness no. 4 exh. 23, who was the witness to inquest panchnama has supported the prosecution. Reading the evidence along with panchnama, it appears

that there were injuries as found by the Medical Officer on the person of the deceased. Clothes were also stained with blood as found by the Medical Officer. It is suggested in her evidence that she has signed a prepared panchnama which she has denied.

#. Panch Ganpatsinh - prosecution witness no. 5 so also panch Natvarlal Thakkar - prosecution witness no. 3 were called for recording panchnama of the place of incident. From the panchnama, it appears that there was standing crop of cotton. On the Shedha of Chas, substance of green colour was found, which was taken in a plastic bag and was sealed from the scene of offence.

#. It appears the bottle was recovered under the panchnama vide exh. 27. The panchnama of clothes put on by the deceased was also drawn. However, panch Himmatsinh has not supported the prosecution.

#. Dalpatsinh Rathod - prosecution witness no. 7, father of the deceased has stated on oath that Indira got married with appellant Natvarlal before about one and a half years and she was being tortured by her husband. On account of ill-treatment, she had been to the parental home where she complained and stayed for about 4 months. Thereafter Sarpanch Danabhai Bharwad stated that there will be no quarrels and even writing was executed and therefore she was sent to the house of her husband. He has deposed that even thereafter she was being beaten as a result of which she came back and stated that she is not willing to go. He has stated that before about two days from the date of incident, when others were at Halol, appellant came and took her away by torturing and by beating her. On the next day, when they visited the house of the husband of Indira, they were told that she has expired. This witness has been cross-examined in detail. It is suggested that she was not willing to marry the appellant as she had love affairs with another person and therefore, she was not willing to stay with the appellant. Except this vague allegation, no other question has been put to the witness which would suggest that evidence is not acceptable. There are some minor contradictions which would not affect the prosecution version. The fact remains that within a period of one and a half years, the lady was compelled to commit suicide, which indicates the nature of torture. We have gone through the prosecution evidence and we are in agreement with the views expressed by the learned trial Judge and therefore, we do not discuss the evidence in detail. It may be required to be noted that the appellant had come out with a case of snake bite in his

statement, which does not find support from the prosecution evidence. In view of what is stated hereinabove, we do not find any reason to interfere with the order of conviction recorded by the trial Judge. Hence, both the appeals stand dismissed.

[B.C. PATEL, J.] [A.L. DAVE, J.]

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